

BP OIL SPILL IMPACT OF REGION 6 TRIBES

BACKGROUND PAPER

Tribal Consultation. Federal agencies involved in the Oil Spill response should engage in government-to-government consultation regarding actions that may significantly impact the interests of federally-recognized tribes, consistent with the federal trust responsibility to such tribes and Executive policy. Federal government decisions about protective and clean-up measures, and other agency activities involved with the Spill response, could significantly impact Tribal burial mounds, historic properties, or other Tribal interests. Tribal interests may be impacted even though current-day Tribal headquarters and occupied lands lie inland, because sensitive cultural properties and areas used by Tribal citizens for subsistence or other purposes are associated with coastal areas.

Since the Chitimacha have specifically stated that they believe their burial mounds and Tribal interests may be impacted by the BP Oil Spill and related federal actions, federal officials from the lead and support agencies should engage in further dialog with Tribal governmental officials to the fullest extent practicable to ensure that an appropriate consultation process can be established and Tribal input and views obtained. Region 6 is prepared to assist in carrying out this consultation with the Tribe.

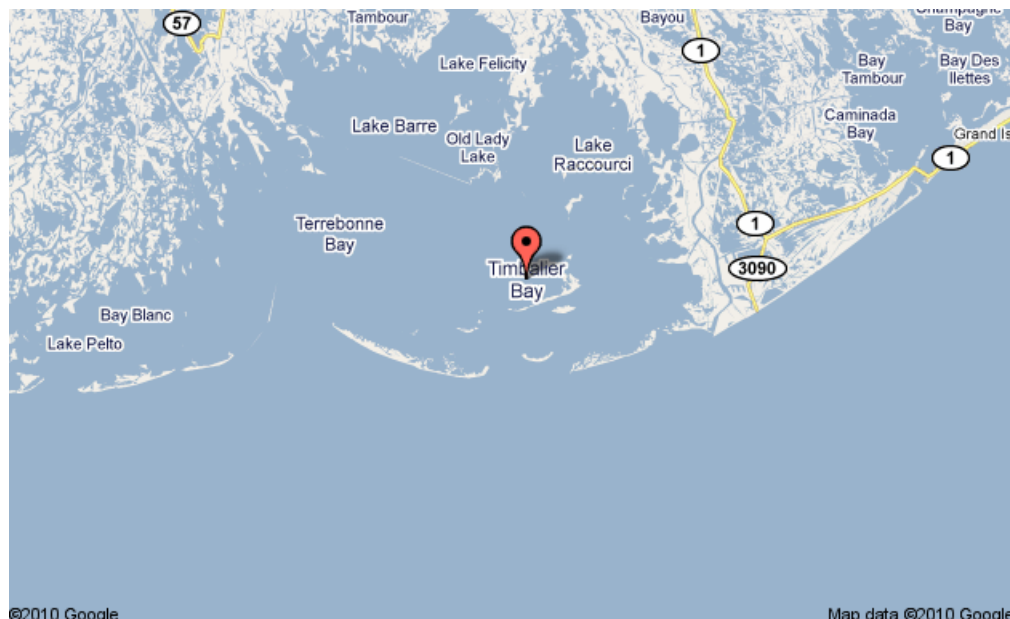
National Historic Preservation Act. Tribal burial grounds are likely to qualify as historic properties under the National Historic Preservation Act (NHPA), Public Law 89-665, 16 U.S.C. § 470, *et seq.* Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties that are listed or eligible for listing in the National Register of Historic Places. A federal agency conducting an undertaking must notify and consult with appropriate tribal and state officials and other entities on the potential effects of agency activities. The Section 106 implementing regulations at 36 C.F.R. Part 800 provide for streamlined consultation and notification procedures in the event of an emergency. 36 C.F.R. § 800.12. Among other things, the regulations provide that federal agencies may enter into programmatic agreements establishing alternate procedures to address potential impacts on historic properties during emergency response actions.¹

EPA, the Coast Guard, and other agencies have entered into a Programmatic Agreement on Protection of Historic Properties During Emergency Response Under the National Oil and Hazardous Substances Pollution Contingency Plan (PA). Under the PA, the parties are to establish, in consultation with relevant tribal, state, and other entities, appropriate procedures to consider potential impacts on historic properties during spill responses and to incorporate such procedures into localized Area Contingency Plans. These Plans then form the framework for the consideration of historic properties during spill response actions. Although the PA recognizes the paramount importance of protecting public health and safety, it also establishes expectations that appropriate officials, including tribal officials, will be notified and consulted where relevant historic properties may be affected. The Federal On Scene Coordinator (FOSC) for this incident is the Coast Guard. Therefore, the Coast Guard has the lead in implementing the terms of the PA and for NHPA compliance generally. To assist the FOSC in this area, we believe it is important for EPA to communicate with the Coast Guard regarding information provided by the Chitimacha relating to their burials grounds and to work with the FOSC and the Tribe to minimize potential impacts on these historic resources.

¹ The regulations also provide a limited exemption from the section 106 process for "[i]mmediate rescue and salvage operations conducted to preserve life or property..." 36 C.F.R. § 800.12(d).

Location of Potential Historic Properties.

Barrier Island Burial Mounds Pointed Out By Chitimacha - The map below shows the barrier islands where the Chitimacha generally indicated their burial grounds are located, including (from East to West) East Timbalier Island, Timbalier Island and Whiskey Island.



Although the Chitimacha appear hesitant to provide exact locations of burial mounds on the barrier islands because of the potential for public release of culturally sensitive information, the NHPA² may provide some authority for protecting this information. Section 304 of the NHPA provides the head of a Federal agency with authority to withhold information about the location, character or ownership of a historic property when disclosure may risk harm to the property or impede use of a traditional religious site. The PA also provides that the FOSC should, consistent with applicable law, ensure the confidentiality of historic property site location information so as to minimize opportunities for vandalism or theft. In addition, a confidentiality agreement involving the Tribe and federal agencies might be utilized. Even if federal agencies limit access to details of site locations, it is likely that some information will necessarily be disclosed if boundaries are marked around the historic properties to protect and avoid disturbance of these areas.

Additional Information On Historic Properties – In addition to the burial mounds on barrier islands that the Chitimacha notified EPA about, there are other cultural sites along the Louisiana coast that may be impacted by the BP Oil Spill.³ These potential historic properties include shell middens located near former village sites, simple and communal burial mounds used by the Chitimacha, and possibly other sites associated with earlier residents in Louisiana.

² See also, 36 C.F.R. § 800.11(c).

³ Generally available historic accounts indicate the Chitimacha may have occupied south Louisiana since at least 500 A.D., and artifacts have been found in their homeland that are said to be 6,000 years old. Large shell middens located near former village sites, and other sites associated with simple and communal burial mounds, were used by the Chitimacha. Historic sites associated with earlier residents in Louisiana may also be present in the area potentially impacted.

Known Archaeological Sites - A Map entitled “Distribution of Prehistoric Archaeological Sites in the Eastern Portion of the Mississippi River Deltaic Plain” (from McIntire 1958) indicates that several middens and other types of historic properties are likely located in the following areas:

- near the coast southeast of Hwy 1, including an area extending from Grand Isle on the East to Hwy 3090 on the West,
- near the coast, East of and opposite of East Timbalier Island,
- along the coast North of Lake La Grosse, and
- in the area extending Southwest from Lake La Grosse to Bay Chaland, Troiscent Piquets Bay, Bay Saint Elaine and Bay Blanc

The presence of historic properties in nearby areas was acknowledged on April 26, 2010, by the LA Department Of Natural Resources, Office Of Coastal Management, in a Coastal Use Authorization & Consistency Determination Permit (C.U.P No.: P20100352), issued to Texas Petroleum Investment Co. The permit includes special provisions in case any traditional cultural properties are discovered during work since “the area ...is all part of the aboriginal homelands of the Chitimacha Tribe of Louisiana. As such, large villages, burial sites, and sacred sites were in place in that entire area.” The permit area is described as:

- Terrebonne Parish, LA, approximately 8 miles southwest of Houma, including Sections 7 And 17, T18S-R16E

The State of Louisiana State Historic Preservation Officer is likely to have additional information on the location of historic properties and cultural sites.

Native American Graves Protection and Repatriation Act and Other Applicable Laws. The Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001, *et seq.*, is a Federal law overseen in part by the Secretary of the Interior. Regulations implementing NAGPRA are contained in 43 C.F.R. Part 10. The statute and regulations include provisions that, among other things, address the inadvertent discovery and intentional excavation and removal of covered remains, objects and artifacts on federal or tribal lands, and may call for consultation with affected Indian tribes. The applicability of NAGPRA and other state/federal laws is not addressed in this memo (nor are these authorities covered by the PA), but further inquiry may be appropriate to ensure compliance with all applicable legal requirements associated with disturbing human remains, artifacts, funerary objects, sacred objects and cultural sites.

Historic Properties and Cultural Sites Associated with Other States and Tribes. The FOSC or other appropriate entity should obtain information on historic properties and culturally sensitive areas from all States and potentially affected Tribe(s) located along coastal areas where impacts associated with the BP Oil Spill and spill response activities may occur. The tribes with historic or cultural sites should be consulted about whether they wish to have a Tribal representative present during various oil spill response activities.